IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1578 of 2014 (O&M) &
XOBJC No.177-CII of 2014
Date of Decision:- 21.08.2015

New India Assurance Company Ltd.

.....Appellant

Versus

Uma Rani and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

1. **Whether Reporters of local papers may be allowed to see the judgment? Yes**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest? Yes**

Present: Ms. Vandana Malhtora, Advocate,
for the appellant-Insurance Company.

Mr. Ashwani Arora, Advocate
for respondent Nos.1 to 3-Cross Objectors.

Mr. Balwinder Singh Sehra, Advocate
for respondent No.5.

Respondent No.4 already ex-parte.

****

<u>SHEKHER DHAWAN, J.</u>

<u>FAO No. 1578 of 2014</u>

Appellant-Insurance Company challenged the Award dated 03.01.2014, passed by Motor Accident Claims Tribunal, Rupnagar (hereinafter to be referred as 'The Tribunal') whereby 'The Tribunal' awarded compensation of ₹17,79,000/- along with interest @ 9% per annum on account of death of Amandeep.

2. Relevant facts of the case that on 15.06.2011 Amandeep along with brother Munish Kumar were going towards their quarter, after doing some domestic work. Amandeep was on his Scooter bearing registration No.PB-16-B-6389 whereas Munish Kumar was on his motorcycle No.PB-74-2242. At about 9.30 AM, they were at a short distance from Nangal Dam Chowk, when scooter of Amandeep struck against Tanker No.PB-19-E-7166, which was wrongly parked in the middle of the road without any indicator. Amandeep sustained injuries and died at the spot. The matter was reported to the police. Claimants took the plea that accident had taken place because of rash and negligent driving of respondent No.1. Appellant-Insurance Company took the plea that driver of the Tanker was not having a valid and effective licence on the date of accident. Even the deceased was not having a valid driving licence. In fact the accident had taken place due to the negligence of deceased himself. Even otherwise, it was a case of contributory negligence. 'The Tribunal' recorded the findings that respondent No.1 had parked his Tanker in the middle of the road at night time without any indication and accident was because of that fact and respondent No.1 is liable to pay the amount of compensation. The liability of respondent Nos.2 and 3 was in the capacity of owner of the Tanker and insurer of the Tanker.

3. Learned counsel for the appellant-Insurance Company took the plea that 'The Tribunal' has completely ignored the fact that Tanker was stationery truck and deceased himself struck against the stationery

Tanker. As such, the accident was because of rash and negligent driving of scooterist itself or it was a case of contributory negligence at least. Learned counsel for appellant also took the plea that income of the deceased has been taken to be ₹13,500/- per month on the basis of single certificate, whereas in another certificate income was shown to be ₹10,000/- per month. 'The Tribunal' has taken the amount of compensation on the higher side and the income of the deceased could be taken on the basis of minimum wages prevailing in the year 2011 only. So, Award dated 03.01.2014 be modified accordingly.

4. Learned counsel for claimants-respondent Nos.1 to 3 took the plea that 'The Tribunal' has awarded the amount of compensation on the basis of evidence available on file that accident had taken place of rash and negligent act of respondent No.1, who had parked the Tanker in the middle of the road at 10.00 PM without any indication. Respondent No.1 was facing the trial and did not appear before 'The Tribunal'. So, there are no grounds to return the findings that it was a case of contributory negligence in any way.

5. As regards to income of the deceased, learned counsel for claimants-respondent No.1 to 3 took the plea that 'The Tribunal' returned the findings on the basis of salary certificate produced before 'The Tribunal'. Another certificate regarding showing income of deceased ₹10,000/- per month was not produced by the claimant but by appellant-Insurance Company. The salary certificate showing income of the deceased ₹13,500/- was produced. The witness was summoned but the

said witness failed to put appearance before 'The Tribunal' despite coercive method taken by the Court. Appeal filed by appellant-Insurance Company is without any merit and same be dismissed.

6. Having considered the rival submissions made by learned counsel for the parties, this Court is of the considered view that claimants had come with the plea that accident had taken place because of rash and negligent driving of respondent No.1, on the basis of evidence available on file. 'The Tribunal' returned positive findings that accident was because of rash and negligent act of respondent No.1, as he had parked the Tanker in the middle of the road during night time and accident was because of that fact only. Appellant-Insurance Company has not been able to make out any case of contributory negligence and at this stage there is no basis to set aside the findings recorded by 'The Tribunal'. It is matter of common knowledge that anybody to park the Tanker on the road, he must give proper indication, so that on coming traffic may notice the stationery vehicle on the road during night time. Such parking of vehicle on the middle of the road without any proper indication certainly is an act of rash and negligence on the part of driver of the vehicle and 'The Tribunal' returned the finding on the said basis. There are no grounds to set aside the said findings.

7. As regards to income of the deceased, 'The Tribunal' has taken income of deceased ₹10,000/- per month on the basis said certificate, which was produced by appellant-Insurance Company. There are no grounds for any reduction in amount of compensation awarded by 'The Tribunal'.

8. Resultantly the present appeal filed by appellant-Insurance Company is without any merit and same stands dismissed.

<u>XOBJC No.177-CII of 2014</u>

Learned counsel for claimants/cross-objectors took the plea that salary of the deceased was to be ₹13,500/- per month and 'The Tribunal' fell in error while taking the income of the deceased as only ₹13000/- per month. The said salary certificate was for the period from 2010 to March 2011. More so, the deceased was of the age of 28 years and at the age of 28 years, the claimants were entitled 50% increase in the income of the deceased on account of enhanced future earnings, as per law laid down by Hon’ble Supreme Court in case **<u>Rajesh and others</u>** Vs. **<u>Rajbir Singh and others</u>, 2013 (3), RCR (Civil) 170.** Even, the minimum amount on account of funeral expenses and consortium has also not been awarded by 'The Tribunal'. Only ₹5000/- on account of funeral expenses and ₹6000/- on account of loss of consortium, whereas claimants entitled to at least ₹25,000/- on account of funeral expenses and ₹1,00,000/- on account of loss of consortium and loss of estate of widow.

2. Learned counsel for appellant-Insurance Company took the plea that 'The Tribunal' has already awarded just compensation and there are no grounds for further enhancement.

3. Having considered the cross-objections, reply to the cross-objections and arguments advanced by learned counsel for the parties, this Court is of the considered view that age of the deceased was 28 years

and as per law laid down Hon'ble Supreme Court in case **Rajesh and others** Vs. **Rajbir Singh and others**, **case (supra)**, the claimants were entitled to increase 50% on account of enhanced future earnings and not 30%, as awarded by 'The Tribunal'. So, the claimants are certainly entitled to receive the same. More so, the claimants are also entitled to receive a sum of ₹25,000/- on account of funeral expenses and another sum of ₹1,00,000/- on account of consortium and also for estate of widow. The amount of compensation is reassessed as under: -

Monthly income	₹10,000/-
Annual Loss of income	₹10,000 x 12 = ₹1,20,000/-
Addition of 50% on account of loss of enhanced future earnings	₹1,20,000/- + ₹60,000/- = ₹1,80,000/-
Applying multiplier of 17	₹1,80,000/- x 17 = ₹30,60,000/-
Loss of consortium for widow	₹1,00,000/-
Funeral expenses	₹25,000/-
Total compensation	₹30,60,000/- + ₹1,00,000/- + ₹25,000 = ₹31,85,000/-
Enhanced amount of compensation	₹31,85,000/- – ₹17,79,000/- = ₹14,06,000/-

4. The enhanced amount of compensation of ₹14,06,000/- shall be payable from the date of claim petition along with interest @ 7.5% per annum from the date of claim petition. Remaining conditions of disbursal of amount shall remain unaltered.

5. Accordingly, appeal filed by appellant-Insurance Company stands dismissed and cross-objections filed by claimants-respondents Nos.1 to 3 is accepted partly.

(SHEKHER DHAWAN)
August 21, 2015 JUDGE
naresh.k